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Transitional Justice as Structural Justice

Krista K. Thomason

Philosophical scholarship on transitional justice has largely focused on adjudicating between retributive or restorative justice in post-conflict societies (Mani 2002: 5–6; Arbour 2007: 5–6; Nagy 2008: 276–8). The primary question is usually as follows: do we properly achieve justice by arresting and prosecuting the perpetrators of genocide and mass atrocity, or do we properly achieve justice by reconciliation between victims and perpetrators in favor of establishing peace? The debate over retributive and restorative justice has been the focus of recent criticism. Some scholars have begun to urge theorists of transitional justice to take into account the economic, cultural, and social realities of post-conflict nations (Arbour 2007; Nagy 2008; Dicklitch and Malik 2010; Millar 2011). This objection raises an important question for scholarship on transitional justice: exactly how do we take into account the particularities of post-conflict nations while still exploring transitional justice at the level of theory? In what follows, I propose an answer to this question. Using Young’s concept of structural injustice, I construct a theoretical framework of transitional justice as what I call *structural justice* (Young 2011). Transitional justice as structural justice focuses primarily on the political, social, and economic institutions that give rise to violence. It aims to (a) revise or abolish the original institutions that contributed to the violence and (b) implement new institutions that prevent economic, social, or political disenfranchisement. I argue that structural justice is a theoretical framework of transitional justice that can accommodate economic and social issues of particular post-conflict nations.

The Importance of Theories of Transitional Justice

Literature in transitional justice spans both theoretical and empirical realms. A great deal of work has been done on the empirical issues of transitional justice by anthropologists, sociologists, historians, and journalists (Crocker 1999: 45–6). Political theory, legal theory, and philosophy have contributed to the theoretical side. One might wonder, however, why transitional justice needs much theorizing. Each transitional society is different and as such one could argue that the empirical study of particular nations is much more crucial to the process of transition than abstract theory. Even among theorists, there seems to be little consensus about the components of any particular theory of transitional justice and where consensus exists, it is thin (de Greiff 2012: 32). If theories of transitional justice are disparate, it is unclear how work in the theoretical realm aids in actual processes of transitional justice. One might reasonably wonder if there is anything to be gained from such theorizing.

Philosophers who work in transitional justice have responded to challenges like these in several ways. First, as de Greiff argues, theory can help guide action. It can help us to “understand what we are committing ourselves to” (de Greiff 2012: 33). If, for instance, one thinks that the primary aim of transitional justice is to achieve lasting peace, then theorizing can clarify just what lasting peace is and how it is achieved. Additionally, theorizing helps to provide societies with a broader perspective on the transitional process. Theorizing about transitional justice apart

from any particular cases of it can draw attention to common problems. Paying too strict attention to the particularities of individual cases of transitional justice is likely to miss deeper issues. Transitional justice that focuses too closely on the immediate situation is likely to be “ad hoc, ineffective, inconsistent, and unstable” (Crocker 1999: 63). Finally, theories of transitional justice deal explicitly with the normative aims of transitional justice (de Greiff 2012; Crocker 1999). While empirical study focuses on the details of what has happened or is happening in transitional societies, theory investigates what ought to have happened or what ought to happen in the future. Explicit attention to the normative aspect of transitional justice is one of the primary purposes of theory. Articulating what transitional justice ought to be or ought to achieve is an indispensable guide to transitional policies, laws, and procedures (de Greiff 2012: 33).

A Challenge for Theories of Transitional Justice

Despite the importance of transitional justice theory, it faces a substantive challenge. More recently, scholarship in transitional justice raises the worry that too often Western conceptions of justice dominate the process of post-conflict reconciliation (Mani 2002; Arbour 2007; Nagy 2008; Cornthassel and Holder 2008; Dicklitch and Malik 2010; Millar 2011). This concern arises both at the level of practice and at the level of theory. With regard to practice, tribunals and truth commissions are often organized and funded by international institutions and Western nations (Nagy 2008: 278; Dicklitch and Malik 2010: 520–21; Hoogenboom and Vieille 2010: 189–90). Thus the paradigm for transitional justice tends to resemble a Western legalistic model. Even though truth commissions are thought to be more conducive to reconciliation than tribunals, they still share many of the same legalistic elements: witness testimony, gathering evidence, and cross-examination by members of the truth commission (Nagy 2008: 278–9). The parties involved in implementing transitional justice believe that reconciliation ought to reflect the values, beliefs, and commitments particular to the nation in transition. Desmond Tutu argues, for example, that the Truth and Reconciliation Commission of South Africa was rooted in the African concept of *Ubuntu*, which captured the commitments and attitudes of South Africa better than a tribunal (Tutu 1999: 31).

Those who raise the worry about Western influence suggest that it is important that transitional justice incorporate and address the particular concerns of the members of the transitional society because they should experience the process as just. Millar points out, for instance, that local people in Makeni expected that the transitional justice process in Sierra Leone would help amputees with access to health care, but it did not (Millar 2010: 525). As such, they perceive the TRC as failing to provide justice because victims of the war are unable to meet their basic needs. If the members of a transitional society do not experience truth commissions or tribunals as accomplishing justice, transitional justice is ultimately “alien and distant to those who actually have to live together after atrocity” (Nagy 2008: 275). This raises two serious worries. First, if transitional justice is experienced as alien, the peace supposedly brokered by truth commissions and tribunals may not be sustainable. The local people may not feel any ownership or connection to the peace and thus be unmotivated to maintain it. Second, the failures of the truth commissions and tribunals may be harming the societies they are supposed to help. The victims of the conflict might feel wronged by the perpetrators of violence and then feel wronged a second time when their concerns are ignored by the truth commissions and tribunals. This second worry is often compounded by the political involvement that Western nations may have had in the original conflict. The fact that the UN, for instance, gave a seat in the General Assembly to the “Coalition Government of Democratic Kampuchea,” which gave international recognition to the rule of the Khmer Rouge, gives the

people of Cambodia little faith in the good intentions of the UN-backed tribunal (Dicklitch and Malik 2010: 518). To address these worries, scholars urge that special attention be paid to the particular features of each transitional society in the implementation of transitional justice.

The problem of a dominant paradigm arises at the level of scholarship as well. Millar notes that most scholarship on transitional justice is written by Western scholars, and scholars question whether the absence of non-Western voices shapes the debate:

Because the currently dominant paradigms of transitional justice place the emphasis on either individuated retribution (in the form of criminal tribunals) or collective truth telling (in the form of Truth Commissions), and the application of transitional justice is dominated by Western and relatively privileged intellectuals, these more basic needs for economic and social justice are commonly overlooked or disparaged in the ongoing discourse. (Millar 2011: 531)

A large portion of the literature on transitional justice focuses on the debate between types of justice, mainly retribution and reconciliation (Little 1999: 66–7; Dicklitch and Malik 2010: 518). This debate resembles the more classical debates in political philosophy about justifications of punishment (Arbour 2007: 4–6; Nagy 2003: 278–9). As such, there is a tendency to fit the problems of transitional justice into an existing model that is based on issues in the Western legal tradition. Scholars suggest that in spite of its growth over the last two decades, the literature on transitional justice has been myopically concentrated on a small handful of theoretical issues that largely ignore problems facing particular transitioning societies.

Theorists might reasonably respond that many of the current theories of transitional justice can be amended to include some of the issues that critics raise. Current work in transitional justice has begun to include issues like fair distribution of goods (de Greiff 2012; Fuller 2012), gender-based violence (Oosterveld 2009; Buckley-Zistel and Stanley 2012), and reparations or memorialization (Walker 2010; Blustein 2012) as essential components to transition. Although widening the scope of transitional justice to include things like economic concerns and gender-based violence is surely a step forward, merely casting a wider net does not solve a deeper theoretical tension uncovered by the challenge above. Retributive and restorative models have in common a narrow focus on the particular violent event or particular violent regime: retributive justice claims such events must be punished and restorative justice claims that the society must heal from these events. In both cases, transitional justice is that which “bridges a violent or repressive past and a peaceful, democratic future” (Nagy 2008: 289). Even if we think of transitional justice as including more, it is still conceived as that which mends a rift or heals a wound. Including memorialization or reparations as essential to transition merely reinforces the paradigm of transitional justice as a response to massive violence or some particular regime. But thinking in this way ultimately undermines the project of trying to accommodate the specifics of post-conflict societies.

The particular conflicts that are a focus of trials and truth commissions are often closely tied to a longer history of conflict in the society. But the violence and conflicts are seen as deviations from the norm: they are “dark times” in an otherwise peaceful nation. This conception does not allow for the examination of previous policies and historical legacies that may have led to or fueled the violence. The challenge from scholars like Nagy, Millar, and Arbour precisely is to argue that scholarship in transitional justice ought not to see a genocide, mass atrocity, or violent regime as a deviation from a society’s otherwise peaceful and unproblematic history. There were many incidents of violence during South African apartheid committed by both the police force and the resistance movements, but apartheid itself was the result of several laws and policies. Apartheid was implemented over several years, which means that its policies were at some point the norm and not the deviation. Additionally,

the 1994 violence of the Rwandan genocide was extreme and immediate, but given the long-standing historical tensions between the Hutus and the Tutsis as well as the rampant and well-known violence of Dutch colonial rule, it is not as though the genocide was an *ex nihilo* disruption in an otherwise harmonious state of affairs (Hochschild 1999; Mamdani 2001). Similarly, the violence against the Maya in Guatemala is part of a long history of tensions between the Maya and Ladino people over the economic future and national identity of Guatemala (Handy 2003). Even though the massacre in Panzos was appalling, it was “not surprising” given the reinvigorated guerilla movements in the 1960s (Handy 2003: 285–6). The point here is not to downplay the outbreaks of violence or mass atrocity in these cases, but rather to show that—horrifying though they are—seeing them as deviations from the norm misses the extent to which background conditions of the societies in which they take place contributed to them. The scholars who challenge the legalistic model of transitional justice are suggesting that sustainable peace and reconciliation are only possible if these background conditions are addressed in the process of transition.

The charge of Western dominance in both the theory and practice of transitional justice is a serious one. How are we to balance the importance and need for theory with the corrective value of paying attention to the “facts on the ground” in individual cases? I offer a theoretical model for transitional justice that avoids the pitfalls of Western dominance. In what follows, I argue that Iris Young’s account of structural injustice can be modified to provide an account of structural justice. Transitional justice can be, as I will argue, thought of as structural justice. I will illustrate how transitional justice as structural justice might work by analyzing particular cases of transitioning societies. Structural justice can be a model of transitional justice that avoids the overly legalistic elements of other theories.

Young’s Structural Injustice

Young defines structural injustice this way:

Structural injustice occurs when social processes put large groups of persons under systematic threat of domination or deprivation of the means to develop and exercise their capacities, at the same time that these processes enable others to dominate or to have a wide range of opportunities for developing and exercising capabilities available to them. (Young 2011: 52)

She provides an example of housing deprivation in the US to illustrate: people often lack access to affordable housing due to a number of factors beyond their control (Young 2011:45). Landlords sell older buildings to developers forcing tenants to move. These former tenants are forced to seek apartments elsewhere, even though affordable housing is at a premium. The apartments they can afford are often too far from their jobs, which would require them to buy a car that they cannot afford. Or affordable housing is in unsafe neighborhoods where families with children are afraid to move (Young 2011: 43). As a result, many families face the prospect of homelessness—not because they have been the victim of a crime or the victim of discrimination, but simply because a complex set of laws, policies, and social structures interact in ways that disadvantage them (Young 2011: 52). In spite of the fact that there is no nefarious actor who threatens families with homelessness, Young contends that being vulnerable to homelessness is a wrong because “some people’s options are unfairly constrained and they are threatened with deprivation while others derive significant benefits” (Young 2011: 52). Lacking affordable housing wrongs the people who are disadvantaged in this system because their lives and plans are unfairly limited because of the position they occupy in the system. In cases of structural injustice, no one person or group of persons is the cause of

the injustice. It is the system—a set of overlapping social forces, laws, and policies—rather than people or groups that is unjust.

Because structural injustice arises in this way, traditional accounts of responsibility cannot adequately explain what ought to be done about it (Young 2011: 74). Traditional conceptions of moral and legal responsibility rely heavily on the notion of liability: those whose actions can be shown to cause or contribute to the harm done are held responsible for it (Young 2011: 97). Thinking about vulnerability to homelessness on the liability model, some person or group must be said to cause the lack of affordable housing and thus blamed for the injustice. The trouble with this model is twofold. First, vast numbers of people contribute to the lack of housing: landlords who sell their older buildings, developers building luxury houses, and wealthier people who can afford pricier rent and so drive up its cost all in some sense “cause” the lack of affordable housing. But none of these actors intend or foresee that their actions cause other families to be vulnerable to homelessness. Traditional models of responsibility usually require that agents must foresee or intend the actions that lead to a wrong in order to be blameworthy for that wrong (Young 2011: 100). In structural injustice, that is not the case. Additionally, the actions of those who cause structural injustice are well within acceptable legal and moral parameters. Wealthier renters are free to choose luxury apartments and landlords are free to sell their property. An agent who acts within her legal and moral rights is traditionally not seen as blameworthy even if her actions cause something bad. An agent acting in self-defense, for instance, is not blameworthy for the death of her attacker even though she kills him. Since the people who cause or contribute to the lack of affordable housing are pursuing their own interests in a morally and legally permissible way, the liability model will hold that they cannot be responsible for the injustice that results (Young 2011: 100).

Given the problems of the liability model of responsibility, Young argues instead for a “social connection” model of responsibility (Young 2011: 96). The social connection model emphasizes the ways in which individuals and nations are connected through complex social relations and dynamic institutions (Young 2006: 119). In contrast to the liability model, it separates responsibility from guilt or blame: agents can be held responsible for contributing to structural injustice even if they cannot be blamed for their particular actions (Young 2011: 104). As such, the social connection model highlights the background conditions in which agents act rather than their individual actions: saying that structural injustices exist is precisely to claim that the structures in which agents act are unjust or unacceptable (Young 2011: 107). We can be held responsible for these injustices because of our participation in and contribution to the systems that bring that injustice about. As Young writes, “Our responsibility derives from our belonging together with others in a system of interdependent processes of cooperation and competition through which we seek benefits and aim to realize projects” (Young 2011: 105). Because the social connection model of responsibility focuses on ways in which individuals and groups contribute to the systems they belong to, responsibility is shared rather than isolated. Although a wealthy renter might be responsible for structural injustice produced by her choice of a luxury apartment, she is not solely responsible for that injustice. All participants in the system that cause injustice are responsible for the injustice in a forward-looking way: they are responsible for altering the system in such a way that alleviates the injustice (Young 2011: 109). The social connection model thus explains what can be done about structural injustice even though it does not result from the bad acts of a person or group.

Young’s account has several features that are attractive for transitional justice. Scholars in transitional justice struggle with questions of complicity and collective responsibility precisely because the violence and conflict that takes place during mass atrocity does not neatly fit the liability model of responsibility. As Nagy points out, violence and conflict often spill across borders: rebel groups often take refuge in neighboring nations and parties to conflict are sometimes funded by

outside organizations (Young 2008: 283). Since conflict is neither isolated nor directly tied to one group, Young's social connection model can accommodate this kind of fluidity. One of the features of Young's account of structural injustice that is in my view most relevant to developing a theory of transitional justice is the importance of background conditions. In what follows, I use this feature to sketch an account of transitional justice as structural justice.

Structural Justice

My suggestion here is that we can use Young's definition of structural injustice to construct an account of transitional justice as *structural justice*. Structural injustice occurs when institutions and systems work in such a way to disadvantage large groups of people while allowing others to benefit. Structural justice, then, would require that institutions and systems work to ensure that large groups of people are not disadvantaged. People can be disadvantaged by structural injustice in a number of ways: they might lack access to basic goods, they might be denied economic opportunities, or they may be ostracized from social life. In order to accommodate the variety of disadvantages, I argue that the primary concern for transitional societies is best understood as the prevention of disenfranchisement. With regard to transitional societies, disenfranchisement would mean that some groups are barred from or unable to fully participate in the process of transition and subsequently in the society's transformation moving forward. Although achieving structural justice is a monumental task and not one easily accomplished even by wealthier industrialized nations, it serves the normative aim of transitional justice theory. Thinking of transitional justice as structural justice provides a standard that helps both to guide the process of transition and to evaluate its success. Ideal transitional justice, in other words, should aim at achieving structural justice. In order to prevent disenfranchisement, the systems and institutions of the transitioning society must be evaluated in two ways. First, the structures that contributed to the conflict or violence must be examined and likely repealed or abolished. Second, the new structures that are put into place must ensure that groups are not disenfranchised moving forward. I will explain each of these evaluation processes.

Transitional justice as structural justice takes as its starting point an evaluation of the institutions that contributed to the original conflict. As Young argues, to claim that structural injustice exists is precisely to claim that the institutions themselves are morally problematic (Young 2011: 107). This approach requires seeing violence or conflict not as the "crime" that has to be either prosecuted or reconciled, but rather as part of the system or institutions out of which it arises. The escalating violence in South Africa during the 1980s and 1990s, for example, was at least in part a response to the inauguration of the tricameral parliament where blacks were not represented, the increased militarization of the National Party, and the ban of the African National Congress (ANC) (Lötter 1997: 52–9). Thinking about the connection between institutions and violence does not entail that the perpetrators of that violence are merely cogs in a larger machine rather than responsible agents. It simply situates conflict in its larger context in order to show how that larger context is unjust. Transitional justice as structural justice also does not rule out the establishment of tribunals or truth commissions. Addressing instances of violence is an important part of the transition process, but it is not sufficient. Addressing the systematic and institutional issues is the main focus of transitional justice as structural justice, and tribunals and truth commissions can operate in the service of this larger goal.

One might object that the structures that give rise to events like apartheid, the Rwandan genocide, and the rule of the Khmer Rouge could potentially be traced to the transitioning society's earliest

history.¹ If this is true, how can transitional justice as structural justice address these historical legacies? The process of transition will require addressing the institutions that are most pressing and most disenfranchising. Deciding which policies to address will depend on the particular cases, and transitional justice as structural justice allows for these kinds of contextualized decisions. In South Africa, for instance, apartheid itself was the most pressing system to be addressed: lifting the ban on the ANC and freeing Mandela paved the way for substantive negotiations. Cambodia, by contrast, has been politically unstable since the Vietnamese invaded in 1979 and government corruption is rampant (Dicklitch and Malik 2010: 517–18). Indeed, because of the political instability and corruption, the Cambodian tribunals have largely stalemated (Dicklitch and Malik 520–1). Reforming the political process seems to be an immediate step for Cambodia to take. This may include, given their still-powerful influence, banning former Khmer Rouge officials from holding public office. The systems that are current and powerful hindrances to the process of transition should be addressed first even if there are historical legacies that gave rise to them. It is true that many of the unjust structures emanate from a society's long history and that history cannot be changed. But it is a strength of transitional justice as structural justice that it is able to consider the events in a transitioning society's history. A successful transition and a sustainable peace may require addressing some of the historical injustices that went unaddressed for too long. Although the wrongs cannot be undone, memorializing them and acknowledging them as part of the society's history—and as linked to the recent violence—may better facilitate reconciliation than simply treating those wrongs as unrelated.²

In addition to evaluating the institutions that led to conflict and violence, transitional justice as structural justice requires ensuring that the new or restored institutions that will be put in place will not disenfranchise groups in the society. Arbour (2007), Nagy (2008), and Millar (2011) specifically call attention to the need for issues of economic and social justice to be included in transitional justice. Transitional justice as structural justice is uniquely able to accommodate these concerns. Both the transitions of Guatemala and Sierra Leone illustrate unaddressed economic and social issues. The violence against the Maya was due in no small part to the conception of Guatemalan nationalism supported by non-Mayans, which was largely European and capitalist (Corn tassel and Holder 2008: 483–5; Handy 2003: 280–1). This vision of Guatemala did not include any aspects of traditional Mayan culture, and it helped facilitate and justify the violence against the Mayan population (Corn tassel and Holder 2008: 484; Handy 2003: 282). Although the truth commission was able to acknowledge this long-standing tension, Corn tassel and Holder argue that the truth commission in Guatemala has not led to proper reconciliation because it did nothing to address indigenous self-determination (2008: 467). Even though the commission recommended reparations to the victims as a measure of restorative justice, it did not address the status of Mayan culture moving forward (Corn tassel and Holder 2008: 485). Reparations and memorials, in other words, recognize the Maya as victims, but not as participants in the future of Guatemala. Transitional justice as structural justice would seek to remedy the possible disenfranchisement that can stem from the failure to integrate Mayan culture into the identity of Guatemala. Implementing policies that specifically aim at supporting Mayan self-determination would be one way to guard against this kind of structural injustice.

With regard to Sierra Leone, Millar notes that the truth commission offered victims an opportunity to tell their stories in a public forum, but local populations expected far more (Millar 2011: 524). The war in Sierra Leone decimated much of the nation's infrastructure: homes were burned, hundreds of thousands of people were displaced, and many people were maimed during the actual episodes of violence (Millar 2011: 518). Although right after the war, many people saw the work of the truth

1 Unlike many truth commissions, the truth commission in Guatemala was able to take into account its nation's history of racism (Corn tassel and Holder 2008: 483).

2 Blustein articulates the way in which memorialization can aid in reconciliation (Blustein 2012: 22).

commission as important, a few years after the commission finished its work, local experiences told a different story. Years later, many victims of the violence still had no assistance from the government for their basic needs. Despite the fact that amputees were unable to work, they did not receive help with medical care for their children (Millar 2011: 525–6). As such, as Millar argues, the victims of the war did not experience the TRC as just (Millar 2011: 529). Given that the background conditions of poverty were a contributing factor to the situation of the war victims, transitional justice as structural justice would take those conditions into account. Rather than focusing on restorative justice as addressing the violence and its immediate aftermath, transitional justice as structural justice focuses on ensuring that the victims of the war are able to participate in the reconciliation process long into the future. They are unable to fully participate if they lack basic means of subsistence. An important part of the transition process in Sierra Leone would have to be rebuilding the government assistance programs to ensure that victims have a viable voice in the transitional society.

The sketch of structural justice I have given here is brief and much more could be said about it, but we can see its main elements. Transitional justice as structural justice takes as its main task the (a) evaluation, revision, or abolition of the systems that led to violence or conflict and (b) implementing new systems that prevent groups from being disenfranchised in the transition process. Transitional justice as structural justice can do this precisely because—unlike a retributive or restorative model—it does not see the violence or conflict as the primary issue to be addressed in transition. Tensions that lead to violence arise out of or as a response to various social and political institutions. Although the violent incidents should be taken seriously, addressing them fully will likely require serious consideration of the conditions that led to them, particularly when violence is perpetrated by multiple parties. In South Africa, the police, the resistance, and private citizens all engaged in violent acts. Because transitional justice as structural justice evaluates systems and institutions rather than the actions of particular agents, it can more fully respond to cases where violence is widespread in this way. In addition, transitional justice as structural justice is forward-looking as well as backward-looking. Retributive justice is often criticized for being too backward-looking since it is focused on rectifying past acts. But restorative justice is criticized for being too forward-looking and glossing over the past in favor of a brighter future. Transitional justice as structural justice evaluates and reforms past unjust institutions so that future institutions do not suffer from the same problems. It is not enough to revise or abolish unjust policies, but new policies have to be informed by the mistakes of the past. Finally, if peace is to be sustainable, all groups must have a role to play in the society's future. One of the main aims of transitional justice as structural justice is to ensure that all groups in the society are able to participate as fully as they wish in the transition. While retributive and restorative justice see victims and perpetrators, structural justice sees a complex set of structures that gave rise to violence as an extreme form of structural injustice.

Responding to the Challenge

Transitional justice as structural justice is able to respond to the challenge that transitional justice theories are too often dominated by Western legalistic elements. First, it does not posit the primary task of transitional justice to be redress for violence or reconciliation from violence. Accounts of transitional justice that focus primarily on the violence or conflict fall too easily into conceiving of that violence or conflict as a “crime” that must be prosecuted or from which the victims must heal. Even though retributive and restorative accounts advocate for very different kinds of responses to the violence (tribunals versus truth commissions), the violence itself remains the thing that must be responded to. The background conditions that led to the conflict might be seen as important for

understanding the conflict, but they are still seen as secondary to the conflict itself. As such, since retributive and restorative accounts posit the conflict as the primary thing to address, transitional justice as structural justice better avoids the legalistic paradigm of the violence as a crime.

Additionally, transitional justice as structural justice is better able to take account of the particular issues involved in each society. First, transitional justice as structural justice will require a comprehensive understanding of the background conditions in order to evaluate and revise those that led to the conflict. These institutions will be different for every post-conflict nation: the long-standing conflict, for instance, between Maya and non-Maya over national identity provides a set of background conditions that is unique to Guatemala. Understanding (and ultimately addressing) this issue cannot be achieved simply by interviewing the survivors and perpetrators of violence about the details of the conflict. Because each transitional society will have different systems to evaluate, transitional justice as structural justice will require a great deal of information gathering. This information gathering specifically aims at the “facts on the ground” not just about the violence or conflict, but about the fabric of the nation itself. Thus the process will be tailored to the individual society from the start.

Since transitional justice as structural justice has to deal with the particular features of each transitioning nation, there is less of a risk that the members of that nation will experience the transition as alien or external. According to locals interviewed, both the tribunals in Bosnia and truth commission in Sierra Leone failed to reflect the concerns of many of the members of the transitioning nations (Hoogenboom and Vieille 2010; Millar 2011). Because the tribunal and truth commission are primarily concerned with violent events, they see the groups involved as victims of the war. But the war affects these groups not just as survivors of violence, but as members of the society in crisis. The amputees in Sierra Leone are literal victims of the violence (in being maimed), but they are also “victims” in a wider sense because the nation in which they live is in crisis. These kinds of concerns are not addressed if the victims are only thought of as survivors of violence. Tribunals and truth commissions are experienced as external or alien because they do not see the victims as part of the social and economic network that they exist in. The amputees in Sierra Leone do not see themselves as just amputees; they see themselves as members of a war-torn nation whose government assistance programs are unable to help them (Millar 2011: 526). Transitional justice as structural justice addresses the concerns of the victims as members of a society in crisis, not just as survivors of a particular violent event. If structural justice focuses on the victims as members of a community, the risk that they will feel alienated during transition is alleviated.

Finally, economic and social issues will not be mere add-ons to transitional justice as structural justice. Scholars like Arbour and Nagy have called for economic and social issues to be at the center of transitional justice, not simply in its periphery (Arbour 2007; Nagy 2008). For example, even though the truth commission in South Africa is widely considered a success, economic issues that are directly related to racial discrimination have yet to be properly addressed (Nagy 2008: 280). The TRC was only mandated to deal with the most egregious violence and thus any attention paid to economic issues had to be secondary (Nagy 2008: 284). Transitional justice as structural justice, unlike other models, puts these issues at the forefront of transition. Young conceives of structural injustice as starting from an individual’s social or economic position and determining whether that position is either advantaged or disadvantaged (Young 2012: 57). Social positions are determined by a number of factors, such as gender, education, ethnicity, and community membership. Since addressing structural injustice requires knowing how different social positions fair in the society, transitional justice as structural justice will deal directly with issues like access to education or gender discrimination. In order to ensure that groups are not disenfranchised in the process of transition, the disadvantages of social positions will have to be remedied or addressed before or as the society moves forward. Because transitional justice as structural justice requires

this attention to social as well as economic institutions, it is better able to accommodate differing cultural contexts, which can avoid the problem of “one-size-fits-all” solutions.

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